

REMARKS

In the final Office Action, the Examiner rejects claims 1, 2, 4-11, and 16 under 35 U.S.C. § 103(a) as unpatentable over STUART et al. (U.S. Patent No. 6,661,431) in view of MESSER (U.S. Patent No. 7,020,622), and further in view of RYAN et al. (U.S. Patent No. 6,421,675); rejects claim 12 under 35 U.S.C. § 103(a) as unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al., and still further in view of SRINIVASAN et al. (U.S. Patent Application Publication No. 2002/0042738); rejects claims 13, 14, 17-21, 23-30, and 33-38 under 35 U.S.C. § 103(a) as unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al., further in view of SRINIVASAN et al., and still further in view of MASON et al. (U.S. Patent Application Publication No. 2002/0161648); and rejects claims 3, 15, 22, 31, 32, and 39-43 under 35 U.S.C. § 103(a) as unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al., further in view of SRINIVASAN et al., further in view of MASON et al., and still further in view of ISHIKAWA (U.S. Patent Application Publication No. 2001/0037314). Applicants respectfully traverse these rejections.

By way of the present amendment, Applicants propose amending claims 1, 16, 19, 29, 31, and 42 to improve form. Applicants propose canceling claims 12-14 and 33 without prejudice or disclaimer of the subject matter thereof. Applicants further propose adding claims 44-46. No new matter would be added by way of the present amendment. Claims 1-11, 15-32, and 34-46 would remain pending after entry of the present amendment.

Request for reconsideration of the finality of the Office Action

Applicants respectfully submit that the rejection of claim 16 as allegedly unpatentable over STUART et al., MESSER, and RYAN et al. is a new ground of rejection improperly made final.

In the Office Action dated November 5, 2008, the Examiner issued a rejection of claim 16 under 35 U.S.C. § 103(a) as allegedly unpatentable over STUART et al. and MESSER. In response to the Office Action of November 5, 2008, Applicants submitted an Amendment, dated April 6, 2009. In the current Final Office Action, dated June 15, 2009, the Examiner indicated, "Applicant's arguments [made in the Amendment dated April 6, 2009] with respect to claim(s) 1-43 have been considered but are moot in view of the new ground(s) of rejection" (Final Office Action, p. 34). The Examiner then alleged that Applicants' Amendment, dated April 6, 2009, necessitated the Examiner issuing the current Final Office Action of June 15, 2009 (Final Office Action, p. 34).

In view of the foregoing comments, it is clear that the Examiner improperly made final the rejection under of claim 16 under 35 U.S.C. § 103(a) as allegedly unpatentable over STUART et al., MESSER, and RYAN et al., set forth in the Final Office Action dated June 15, 2009.

The Manual of Patent Examining Procedure (MPEP) at § 706.07(a) provides in part as follows:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendments of the claims, nor based on information submitted in an information disclosure statement.

In the Amendment, filed April 6, 2009, claim 16 was not amended. Thus, it is clear that the new ground of rejection of claim 16 under STUART et al., MESSER, and RYAN et al. was not necessitated by the amendment of the application, but rather, was necessitated by Applicants' arguments.

Accordingly, Applicants respectfully submit that the Final Office Action, dated June 15, 2009, is improper and should be withdrawn. Applicants should be entitled to an opportunity to

fully respond to the new ground of rejection without being restricted by the requirements set forth in 37 CFR § 1.116. A clear definitive issue has not yet been developed between the Examiner and Applicants, such as is required by § 706.07 of the MPEP, before a final rejection is in order.

In view of the foregoing discussion, Applicants request that the finality of the Office Action, dated June 15, 2009, be withdrawn and submits that Applicants are entitled to respond to the Examiner's new ground of rejection before any action in this application is made final.

Rejection under 35 U.S.C. § 103(a) based on STUART et al., MESSER, and RYAN et al.

Claims 1, 2, 4-11, and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over STUART et al. in view of MESSER, and further in view of RYAN et al. Applicants respectfully traverse this rejection.

Independent claim 1 is directed to a method that is performed by one or more server devices. STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, do not disclose or suggest one or more features of claim 1.

For example, STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, do not disclose or suggest determining, identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based on the collected information. The Examiner relies on elements 12 and 14 in Fig. 1 and col. 7, lines 5-67 of STUART et al. for allegedly disclosing identifying, by the processor, non-malicious users visiting the web site from the group of users visiting the web site based on the collected information (final Office Action, p. 2). Applicants respectfully submit that neither these sections of STUART et al., nor any section of STUART et al., discloses or suggests the above feature of claim 1, amended as proposed.

Element 12 in Fig. 1 of STUART et al. discloses “identify and collect information pertaining to entities.” STUART et al. does not disclose that these entities correspond to non-malicious users visiting a web site. In fact, STUART et al. does not distinguish between malicious users visiting a web site and non-malicious users visiting the web site. Thus, STUART et al. cannot disclose or suggest identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based on the collected information, as recited in claim 1, amended as proposed.

Element 14 in Fig. 1 of STUART et al. discloses “collect navigation information.” However, as mentioned above, STUART et al. does not distinguish between malicious users visiting a web site and non-malicious users visiting the web site. Thus, STUART et al. cannot disclose or suggest identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based on the collected information, as recited in claim 1, amended as proposed.

At col. 7, lines 5-67, STUART et al. describes items 12 and 14 of Fig. 1 of STUART et al. As discussed above, these elements of STUART et al. cannot disclose or suggest identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based on the collected information, as recited in claim 1, amended as proposed.

Applicants respectfully submit that the disclosures of MESSER and RYAN et al. do not remedy the deficiencies in the disclosure of STUART et al. set forth above.

Further with respect to claim 1, STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, do not disclose or suggest identifying, by one or

more processors of one or more server devices, a first proportion of a number of non-malicious users visiting the web site to a total number of users visiting the web site, as recited in claim 1, amended as proposed.

As mentioned above, for example, STUART et al. does not identify non-malicious users at all; thus STUART et al. could not possibly identify a first proportion of non-malicious users visiting the website to a total number of users visiting the web site, as recited in claim 1, amended as proposed. Applicants respectfully further submit that the disclosures of MESSER and RYAN et al. do not remedy the deficiencies in the disclosure of STUART et al. set forth above.

Additionally, with respect to claim 1, STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, do not disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second proportion. The Examiner relies on elements 12 and 14 in Fig. 1 and col. 7, line 5-col. 8, line 66, of STUART et al. for allegedly disclosing “determining, by a processor, at least in part on a behavior of the identified non-malicious users” (final Office Action, p. 3). The Examiner admits that STUART et al. does not disclose “an occurrence of spamming on a web site based” and relies on col. 3, lines 9-14, and col. 4, lines 40-42, of MESSER for allegedly disclosing this portion of the above feature of claim 1 (final Office Action, p. 3). Applicants respectfully submit that neither these sections of STUART et al., MESSER, and RYAN et al. nor

any other sections of STUART et al. and MESSER, whether taken alone or in any reasonable combination, disclose or suggest the above feature of claim 1, amended as proposed.

Element 12 in Fig. 1 of STUART et al. discloses “identify and collect information pertaining to entities.” STUART et al. does not disclose that these entities correspond to non-malicious users visiting a web site. In fact, STUART et al. does not distinguish between malicious users visiting a web site and non-malicious users visiting the web site. Thus, STUART et al. cannot disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second proportion, as recited in claim 1, amended as proposed. Moreover, STUART et al. does not, as the Examiner admits, disclose determining an occurrence of spamming on a web site (final Office Action, p. 3). Thus, STUART et al. cannot reasonably be relied on for disclosing the above feature of claim 1, amended as proposed.

Element 14 in Fig. 1 of STUART et al. discloses “collect navigation information.” However, as mentioned above, STUART et al. does not distinguish between malicious users visiting a web site and non-malicious users visiting the web site. Thus, STUART et al. cannot disclose or determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified

first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second proportion, as recited in claim 1, amended as proposed. Moreover, STUART et al. does not, as the Examiner admits, disclose determining an occurrence of spamming on a web site (final Office Action, p. 3). Thus, STUART et al. cannot reasonably be relied on for disclosing the above feature of claim 1, amended as proposed.

At col. 7, line 5-col. 8, line 66, STUART et al. describes Fig. 1 of STUART et al., which illustrates a method that “provides for the collection, analysis, and presentation of high-dimensional information in a comfortable and efficient format.” Nowhere in this discussion does STUART et al. disclose that non-malicious users are identified, or are differentiated from malicious users. As such, this section of STUART et al. cannot disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second proportion, as recited in claim 1, amended as proposed. Moreover, STUART et al. does not, as the Examiner admits, disclose determining an occurrence of spamming on a web site (final Office Action, p. 3). Thus, STUART et al. cannot reasonably be relied on for disclosing the above feature of claim 1, amended as proposed.

At col. 3, lines 9-18, MESSER discloses:

The system further and optionally includes fraud detection processes which detect Javascript on the affiliate's page that automatically triggers and loops the web page linking codes, artificially creating multiple "clicks" on the promotion.

Other objects, features, and advantages of the invention shall become apparent as the description thereof proceeds when considered in connection with the

accompanying illustrative drawings, detailed description of the specific embodiments, and the appended claims.

This section of MESSER does not disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second proportion, as recited in claim 1, amended as proposed. In fact, this section of MESSER merely discloses the detection of “Javascript on the affiliate's page that automatically triggers and loops the web page linking codes, artificially creating multiple ‘clicks’ on the promotion.” The detection of JavaScript on a web page cannot reasonably be construed as identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion to the identified second proportion, as recited in claim 1, amended as proposed.

At col. 4, lines 40-42, MESSER discloses:

As discussed below, the Clearinghouse is further equipped to deter fraud and other non-productive activity.

This section of MESSER does not disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion (of a number of non-malicious users visiting the web site to a total number of users visiting the web site) to the identified second

proportion, as recited in claim 1, amended as proposed. MESSER discloses the detection of fraud through the detection of “Javascript on the affiliate's page that automatically triggers and loops the web page linking codes, artificially creating multiple ‘clicks’ on the promotion” (col. 3, lines 9-13). The detection of JavaScript on a web page cannot reasonably be construed as identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, and comparing the identified first proportion to the identified second proportion, as recited in claim 1, amended as proposed.

Applicants respectfully submit that the disclosure of RYAN et al. does not remedy the deficiencies in the disclosures of STUART et al. and MESSER set forth above.

For at least the foregoing reasons, Applicants submit that claim 1 is patentable over STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) based on STUART et al. and MESSER be reconsidered and withdrawn.

Claims 2 and 4-11 depend from claim 1. Therefore, these claims are patentable over STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 2 and 4-11 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, and RYAN et al. be reconsidered and withdrawn. Moreover, these claims are patentable over STUART et al., MESSER, and RYAN et al. for reasons of their own.

For example, claim 5 recites that the tracking activities of a group of users visiting the web site includes determining a type of browser used by the users in the group of users. The

Examiner appears to admit that STUART et al. does not disclose this feature and relies on col. 2, lines 15-16, of MESSER for allegedly disclosing "The first approach tracks USER visits using cookies to determine Web path" (final Office Action, p. 5). Applicants submit that the Examiner's allegation, regardless of its veracity, does not address the above feature of claim 5.

Applicants initially note that Applicants' previous Amendment included remarks traversing this same allegation. Applicants believe that the Examiner has not considered and substantively responded to Applicants' remarks with respect to this allegation, as is required of the Examiner. *See* M.P.E.P., § 707.07(f). Therefore, Applicants respectfully request that the Examiner fully consider and respond to the following remarks regarding claim 5.

Claim 5 does not recite tracking user visits using cookies. Instead, claim 5 specifically recites that the tracking activities of a group of users visiting the web site includes determining a type of browser used by the users in the group of users. The Examiner's allegation does not address this feature of claim 5. Moreover, one skilled in the art at the time of Applicants' invention would readily appreciate that tracking user visits using cookies is not equivalent to tracking activities of a group of users visiting the web site, where the tracking includes determining a type of browser used by the users in the group of users. Cookies do not typically include information identifying the type of browser used by a user. In addition, the Examiner provides no explanation as to why MESSER's cookies would include this information.

At col. 2, lines 15-18, MESSER discloses:

The first approach tracks USER visits using cookies to determine Web path; alternatively, incentive forms that use a promotional contest to gain voluntary input of data can be applied to collect USER/site data.

This section of MESSER does not disclose or suggest that the tracking activities of a group of users visiting the web site includes determining a type of browser used by the users in the group

of users, as recited in claim 5. This section of MESSER does not disclose or suggest that the cookies include information identifying a type of browser used by a user.

Applicants respectfully submit that the disclosure of RYAN et al. does not remedy the deficiencies in the disclosures of STUART et al. and MESSER set forth above.

For at least these additional reasons, Applicants submit that claim 5 is patentable over STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 5 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, and RYAN et al. be reconsidered and withdrawn.

Independent claim 16 recites features similar to (yet possibly of different scope than) features described above with respect to claim 1. Therefore, Applicants submit that claim 16 is patentable over STUART et al., MESSER, and RYAN et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claim 16 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, and RYAN et al. be reconsidered and withdrawn. Moreover, claim 16, amended as proposed, is patentable over the cited references for at least the following additional reasons.

For instance, the cited references, whether taken alone or in any reasonable combination, do not disclose or suggest means for determining a percentage of the non-malicious visitors out of the plurality of visitors to the website, as recited in claim 16, amended as proposed. In the rejection of another claim, the Examiner appears to admit that STUART et al., MESSER, and RYAN et al. do not disclose or suggest “determining a percentage of users visiting the website that are non-malicious users,” and appears to rely on paragraph 0114 of SRINIVASAN et al. as allegedly disclosing “determining a percentage of users visiting the website that are non-

malicious users” (final Office Action, p. 11). Applicants respectfully disagree with the Examiner's interpretation of SRINIVASAN et al.

At paragraph 0114, SRINIVASAN et al. discloses:

Consider a specific example of an optimal advertisement calculated by the inventive system. In this example, the experiment is being run for a set of 5 ads for the first time. Therefore, at step 410, the system sets up for a uniform distribution of the advertisements. It is estimated in this example that the website receives 100,000 visitors a day. In this case, the five ads--Ad A, Ad B, Ad C, Ad D and Ad E are input into the system. The objective in this example is to maximize the click-through rate, and the minimum effectiveness threshold is 1%.

This section of SRINIVASAN et al. discloses that “it is estimated. . . that the website received 100,000 visitors a day.” Applicants respectfully submit that the number 100,000 could not possibly correspond to a percentage, as recited in claim 16, amended as proposed.

This section of SRINIVASAN et al. further discloses that “[t]he objective in this example is to maximize the click-through rate, and the minimum effectiveness threshold is 1%.” Applicants respectfully submit that this “effectiveness threshold” could not possibly correspond to a percentage of the non-malicious visitors out of the plurality of visitors to the website. As such, Applicants respectfully submit that SRINIVASAN et al. does not disclose or suggest means for determining a percentage of the non-malicious visitors out of the plurality of visitors to the website, as recited in claim 16, amended as proposed.

Applicants respectfully submit that the disclosures of the other cited references do not remedy the deficiencies in the disclosure of SRINIVASAN et al. set forth above.

Further with respect to claim 16, the cited references do not disclose or suggest means for comparing a percentage of non-malicious users selecting the at least one advertisement during the time period the percentage of non-malicious users visiting the web site during the time period. In the rejection of another claim, the Examiner appears to admit that STUART et al.,

MESSER, and RYAN et al. do not disclose or suggest a similar (yet possibly different in scope) feature, but relies on paragraph 0029 of MASON et al. as allegedly disclosing the above feature (final Office Action, p. 12). Applicants respectfully disagree with the Examiner's interpretation of MASON et al.

At paragraph 0029, MASON et al. discloses:

With reference to the two columns on the left side of the drawing, a statistical analysis package monitors and reports the total amount of viewer traffic that an online newspaper website receives. The present invention provides the ability to monitor the success of particular advertising campaign in real time and facilitates the modification of an advertising campaign either automatically or with user intervention. For example, an advertising campaign can start with three different original ads which are reconfigured and then placed on a wide number of websites. By monitoring the number of click-throughs on each of the ads, a more successful derivative advertisement link, i.e., one which receives a greater number of click-throughs, can be substituted for the less successful banners. The computing devices which are used to run and monitor the methods of the present invention can be automatically programmed to substitute a more successful banner for a less successful banner according to one or more pre-determined criteria, e.g., if the number of click-throughs is different by a pre-determined percentage. For example, if the derivative advertisement links from one original ad are receiving 20% more click-throughs than the derivative advertisement links created from a second original ad, then some or all of the placements of the second original ad can be automatically replaced by the more successful ad. Alternatively, other criteria and parameters used in tailoring an advertising campaign can also be adjusted during the campaign automatically or using user intervention. For example, if it is found that a soup advertisement is receiving more click-throughs in the late afternoon and ads for a financial services firm are receiving more click-throughs early in the morning, then the placement of those particular ads can be modified in order to maximize the number of click-throughs for the advertisers. The present invention provides statistics on each derivative advertisement link, each URL and can combine and provide cumulative statistics. The statistics provided preferably comprise at least the number of hits per image per online newspaper website and the number of click-throughs per image per newspaper website.

This section of MASON et al. merely discloses, by way of example, “[b]y monitoring the number of click-throughs on each of the ads, a more successful derivative advertisement link, i.e., one which receives a greater number of click-throughs, can be substituted for the less

successful banners.” This section of MASON et al., however, does not disclose or suggest means for comparing a percentage of non-malicious users selecting the at least one advertisement during the time period to the percentage of non-malicious users visiting the web site during the time period, as recited in claim 16, amended as proposed. In fact, this section of MASON et al. makes no mention of either a percentage of non-malicious users selecting an advertisement during a time period, or a percentage of non-malicious users visiting the web site during the time period.

Applicants respectfully submit that the disclosures of the other cited references do not remedy the deficiencies in the disclosure of MASON et al. set forth above.

Further with respect to claim 16, the cited references do not disclose or suggest means for determining that the at least one advertisement has been spammed when the percentage of non-malicious users selecting the at least one advertisement during the time period is significantly lower than the percentage of non-malicious users visiting the web site during the time period. In the rejection of another claim, the Examiner appears to admit that STUART et al., MESSER, RYAN et al., and MASON et al. do not disclose or suggest a similar (yet possibly different in scope) feature, but relies on paragraph 0016 of SRINIVASAN et al. as allegedly disclosing the similar feature (final Office Action, p. 12). Applicants respectfully submit that neither this section of SRINIVASAN et al. nor any other section of SRINIVASAN et al. discloses or suggests the above feature of claim 16, amended as proposed.

At paragraph 0016, SRINIVASAN et al. discloses:

U.S. Pat. No. 5,752,238 discloses a consumer-driven electronic information pricing mechanism including a pricing modulator and pricing interface contained with a client system. However, in this reference, the customer selects from a menu of pricing options. It does not disclose or teach a real-time determination of price sensitivities.

This section of SRINIVASAN et al. does not even remotely relate to, and thus cannot possibly disclose or suggest, means for determining that the at least one advertisement has been spammed when the percentage of non-malicious users selecting the at least one advertisement during the time period is significantly lower than the percentage of non-malicious users visiting the web site during the time period, as recited in claim 16, amended as proposed.

The Examiner further alleges (final Office Action, p. 12):

(the minimum effectiveness threshold is 1% -- TABLE. 1, illustrates the results of the first iteration of an experiment conducted using the inventive system – [0016])

As discussed above, this 1% effectiveness threshold of SRINIVASAN et al. can not possibly correspond to a percentage of the non-malicious visitors out of the plurality of visitors to the website. As such, Applicants respectfully submit that SRINIVASAN et al. does not disclose or suggest means for determining that the at least one advertisement has been spammed when the percentage of non-malicious users selecting the at least one advertisement during the time period is significantly lower than the percentage of non-malicious users visiting the web site during the time period, as recited in claim 16, amended as proposed.

***Rejection under 35 U.S.C. § 103(a) based on
STUART et al., MESSER, RYAN et al., SRINIVASAN et al.***

Claim 12 is rejected under 35 U.S.C. § 103(a) as unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al., and still further in view of SRINIVASAN et al. Without acquiescing in this rejection, Applicants submit that this rejection is moot for at least the reason that Applicants propose canceling claim 12.

***Rejection under 35 U.S.C. § 103(a) based on
STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al.***

Pending claims 17-21, 23-30, and 34-38 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al.,

further in view of SRINIVASAN et al., and still further in view of MASON et al. Applicants respectfully traverse this rejection.

Independent claim 17 is directed to a computer-readable memory device. STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, do not disclose one or more of the features recited in claim 17.

For example, STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. do not disclose or suggest determining whether the advertisement has been click spammed based at least in part on the determined percentage of non-malicious users clicking the advertisement when the advertisement is provided to the non-malicious users. The Examiner appears to admit that STUART et al., MESSER, and RYAN et al. do not disclose this feature and relies on paragraph 0112 and Table 1 of SRINIVASAN et al. and on paragraph 0029 of MASON et al. as allegedly disclosing the above feature of claim 17 (final Office Action, pp. 12-13). Applicants respectfully disagree with the Examiner's interpretation of SRINIVASAN et al. and MASON et al.

Applicants initially note that Applicants' previous Amendment included remarks traversing this same allegation. Applicants believe that the Examiner has not considered and substantively responded to Applicants' remarks with respect to this allegation, as is required of the Examiner. *See* M.P.E.P., § 707.07(f). Therefore, Applicants respectfully request that the Examiner fully consider and respond to the following remarks regarding claim 17.

At paragraph 0112, SRINIVASAN et al. discloses:

In one embodiment, the inventive system is programmed to automatically delete a particularly ineffective advertisement. In this case, if the measured effectiveness of an advertisement does not meet a minimum threshold at 470, it is deleted from the advertisements to be shown at step 475.

This section of SRINIVASAN et al. does not relate to determining whether an advertisement has

been click spammed. Thus, this section of SRINIVASAN et al. cannot disclose or suggest determining whether the advertisement has been click spammed based at least in part on the determined percentage of non-malicious users clicking the advertisement when the advertisement is provided to the non-malicious users, as recited in claim 17.

Table 1 of SRINIVASAN et al. includes the results of a first iteration of an experiment that was conducted (*see* SRINIVASAN et al., paragraph 0116). This table of SRINIVASAN et al. in no way discloses or suggests determining whether the advertisement has been click spammed based at least in part on the determined percentage of non-malicious users clicking the advertisement when the advertisement is provided to the non-malicious users, as recited in claim 17. In fact, nothing in the SRINIVASAN et al. disclosure relates even remotely to determining whether an advertisement has been click spammed.

Paragraph 0029 of MASON et al. is reproduced above. This section of MASON et al. discloses that “[t]he computing devices which are used to run and monitor the methods of the present invention can be automatically programmed to substitute a more successful banner for a less successful banner according to one or more pre-determined criteria, e.g., if the number of click-throughs is different by a pre-determined percentage that computing devices can substitute a more successful advertising banner for a less successful advertising banner according to one or more predetermined criteria, such as the number of click-throughs.” This section of MASON et al. does not disclose or suggest determining whether the advertisement has been click spammed based at least in part on the determined percentage of non-malicious users clicking the advertisement when the advertisement is provided to the non-malicious users, as recited in claim 17. In fact, this section of MASON et al. in no way relates to determining whether an advertisement has been click spammed.

For at least the foregoing reasons, Applicants submit that claim 17 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 17 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Independent claim 18 recites features similar to (yet possibly of different scope than) features described above with respect to claim 17. Therefore, Applicants submit that claim 18 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 17. Applicants respectfully request that the rejection of claim 18 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Independent claim 19 is directed to a method performed by a server. STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, do not disclose or suggest one or more of the features recited in claim 19.

For example, STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. do not disclose or suggest determining, by the processor, whether the item has been click spammed based at least in part on the determined click rate for the non-malicious users. The Examiner appears to admit that STUART et al., MESSER, and RYAN et al. do not disclose this feature and relies on paragraph 0114 and Table 1 of SRINIVASAN et al. as allegedly disclosing the above feature of claim 17 (final Office Action, p. 15). Applicants respectfully disagree with the Examiner's interpretation of SRINIVASAN et al.

Paragraph 0114 of SRINIVASAN (reproduced above) does not relate to determining whether an advertisement has been click spammed. Thus, this section of SRINIVASAN et al. cannot disclose or suggest determining, by the processor, whether the item has been click spammed based at least in part on the determined click rate for the non-malicious users, as recited in claim 19.

Table 1 of SRINIVASAN et al. includes the results of a first iteration of an experiment that was conducted (*see* SRINIVASAN et al., paragraph 0116). This table of SRINIVASAN et al. in no way discloses or suggests determining, by the processor, whether the item has been click spammed based at least in part on the determined click rate for the non-malicious users, as recited in claim 19. In fact, the entire SRINIVASAN et al. disclosure does not relate to determining whether an advertisement has been click spammed.

If this rejection is maintained, Applicants respectfully request that the Examiner explain how the above sections of SRINIVASAN et al. can reasonably be construed as disclosing determining, by the processor, whether the item has been click spammed based at least in part on the determined click rate for the non-malicious users, as recited in claim 19.

The disclosure of MASON et al. does not remedy the above deficiencies in the disclosures of STUART et al., MESSER, and SRINIVASAN et al.

For at least the foregoing reasons, Applicants submit that claim 19 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 19 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Claims 20, 21, and 23-28 depend from claim 19. Therefore, these claims are patentable

over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 19. Accordingly, Applicants respectfully request that the rejection of claims 20, 21, and 23-28 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Independent claims 29 and 30 recite features similar to (yet possibly of different scope than) features described above with respect to claim 19. Therefore, Applicants submit that claims 29 and 30 are patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 19. Applicants respectfully request that the rejection of claims 29 and 30 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Claims 34 and 35 depend from claim 17. Therefore, these claims are patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 17. Accordingly, Applicants respectfully request that the rejection of claims 34 and 35 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Claims 36 and 37 depend from claim 18. Therefore, these claims are patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 18. Accordingly, Applicants respectfully request that the rejection of claims 36 and 37 under 35

U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

Claim 38 depends from claim 29. Therefore, this claim is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 29. Accordingly, Applicants respectfully request that the rejection of claim 38 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. be reconsidered and withdrawn.

**Rejection under 35 U.S.C. § 103(a) based on
STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA**

Claims 3, 15, 22, 31, 32, and 39-43 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over STUART et al. in view of MESSER, further in view of RYAN et al., further in view of SRINIVASAN et al., still further in view of MASON et al., and yet still further in view of ISHIKAWA. Applicants respectfully traverse this rejection.

Claims 3 and 15 depend from claim 1. While not acquiescing in the rejection of claims 3 and 15, Applicants submit that the disclosures of SRINIVASAN et al., MASON et al., and ISHIKAWA do not remedy the deficiencies in the disclosures of STUART et al., MESSER, and RYAN et al. set forth above with respect to claim 1. Therefore, these claims are patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 3 and 15 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn. Moreover, these claims are patentable over STUART et al., MESSER, RYAN et al.,

SRINIVASAN et al., MASON et al., and ISHIKAWA for reasons of their own.

For example, claim 3 recites that tracking activities of the group of users visiting the web site includes determining whether the users in the group of users load images. The Examiner appears to admit that STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. do not disclose this feature and relies on paragraph 0015 of ISHIKAWA for allegedly disclosing the above feature of claim 3 (final Office Action, p. 27). Applicants respectfully disagree with the Examiner's interpretation of ISHIKAWA.

Applicants initially note that Applicants' previous Amendment included remarks traversing this same allegation. Applicants believe that the Examiner has not considered and substantively responded to Applicants' remarks with respect to this allegation, as is required of the Examiner. *See* M.P.E.P., § 707.07(f). Therefore, Applicants respectfully request that the Examiner fully consider and respond to the following remarks regarding claim 3.

At paragraph 0015, ISHIKAWA discloses:

When an advertising link is loaded onto a user's computer, a confirmation code is generated. If the user chooses to access the advertised materials, for example, the web page being advertised, the user clicks on the advertising link and is transmitted to the merchant's web site. As the user is transmitted to the merchant's web page, current user information generated in accordance with standard transmission protocols and the confirmation code are also transmitted.

This section of ISHIKAWA does not relate to tracking activities of a group of users visiting a web site. ISHIKAWA's disclosure of "an advertising link [being] loaded onto a user's computer" is not equivalent to tracking activities of a group of users visiting a web site that includes determining whether the users in the group of users load images, as recited in claim 3. Moreover, the Examiner provides no explanation as to why one skilled in the art would have construed ISHIKAWA's disclosure of "an advertising link [being] loaded onto a user's computer" as being equivalent to tracking activities of a group of users visiting a web site that

includes determining whether the users in the group of users load images. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 3.

For at least these additional reasons, Applicants submit that claim 3 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 3 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Claim 22 depends from claim 19. While not acquiescing in the rejection of claim 22, Applicants submit that the disclosure of ISHIKAWA does not remedy the deficiencies in the disclosures of STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. set forth above with respect to claim 19. Therefore, this claim is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 19. Accordingly, Applicants respectfully request that the rejection of claim 22 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Independent claim 31, amended as proposed, recites features similar to (yet possibly of different scope than) features described above with respect to claims 1, 3, 5, and 19. Thus, Applicants submit that claim 31 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claims 1, 3, 5, and 19.

For at least these reasons claim 31 is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination. Thus, Applicants respectfully request that the rejection of claim 31 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Claim 32 depends from claim 16. While not acquiescing in the rejection of claim 32, Applicants submit that the disclosures of SRINIVASAN et al., MASON et al., and ISHIKAWA do not remedy the deficiencies in the disclosures of STUART et al., MESSER, and RYAN et al. set forth above with respect to claim 16. Therefore, this claim is patentable over STUART et al., MESSER, SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 16. Accordingly, Applicants respectfully request that the rejection of claim 32 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Claim 39 depends from claim 29. While not acquiescing in the rejection of claim 39, Applicants submit that the disclosure of ISHIKAWA does not remedy the deficiencies in the disclosures of STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. set forth above with respect to claim 29. Therefore, this claim is patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 29. Accordingly, Applicants respectfully request that the rejection of claim 39 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Claims 40 and 41 depend from claim 30. While not acquiescing in the rejection of claims 40 and 41, Applicants submit that the disclosure of ISHIKAWA does not remedy the deficiencies in the disclosures of STUART et al., MESSER, RYAN et al., SRINIVASAN et al., and MASON et al. set forth above with respect to claim 30. Therefore, these claims are patentable over STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 30. Accordingly, Applicants respectfully request that the rejection of claims 40 and 41 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, RYAN et al., SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

Claims 42 and 43 depend from claim 31. Therefore, these claims are patentable over STUART et al., MESSER, SRINIVASAN et al., MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 31. Accordingly, Applicants respectfully request that the rejection of claims 42 and 43 under 35 U.S.C. § 103(a) based on STUART et al., MESSER, SRINIVASAN et al., MASON et al., and ISHIKAWA be reconsidered and withdrawn.

New claims

New claims 44 and 45 depend from claim 1, and new claim 46 depends from claim 16. Therefore, these claims are patentable over the art of record for at least the reasons provided above for claims 1 and 16, respectively.

Conclusion

In view of the foregoing proposed amendments and remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the

pending claims. Applicants respectfully request entry of the present amendment. The present amendment does not raise any new issues or require any additional search of the art.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (*e.g.*, whether a reference constitutes prior art, reasons to modify a reference and/or to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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